

JCWS/CS 26 JAN 2005

Atty Docket No. 18189K-013010US

Gov

PTO FAX NO.: 703-308-7751

OFFICIAL COMMUNICATION
FOR THE ATTENTION OF
OIPE Customer Service

CERTIFICATION OF FACSIMILE TRANSMISSION

I hereby certify that the following documents in re Application of David K. Lewis, et al., Application No. 10/609,135, filed June 27, 2003 for SYSTEMS AND METHODS FOR SURFACE PASTEURIZATION OF PRODUCE are being facsimile transmitted to the Patent and Trademark Office on the date shown below.

Documents Attached

1. Form PTO/SB/21
2. Petition Under 37 CFR 1.181(a) to Withdraw Holding of Abandonment
3. Prosecution Docket Report
4. Copy of Notice of Abandonment mailed 10/19/2004
5. Transmittal Letter - Response to Notice of Missing Parts
6. Form PTO/SB17 (in duplicate)
7. Declaration
8. Power of Attorney or Authorization of Agent
9. Statement under 37 CFR 3.73(b)
10. Copy of Assignment (not for recordation)
11. Two sheets formal drawings
12. Copy of Notice of Missing Parts mailed September 23, 2003

Number of pages being transmitted, including this page: 25

Dated: December 20, 2004

Karen Babcock Dow
Karen B. Dow

**PLEASE CONFIRM RECEIPT OF THIS PAPER BY
RETURN FACSIMILE AT (415) 576-0300**

TOWNSEND and TOWNSEND and CREW LLP
Two Embarcadero Center, Eighth Floor
San Francisco, CA 94111-3834
Telephone: 858-350-6100; Fax: 415-576-0300

PTO/SB/21 (09-04)

TRANSMITTAL FORM

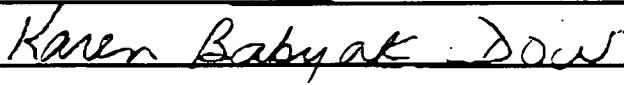
(to be used for all correspondence after initial filing)

		Application Number	10/609,135
		Filing Date	June 27, 2003
		First Named Inventor	Lewis, David K.
		Art Unit	Not yet assigned
		Examiner Name	Not yet assigned
Total Number of Pages in This Submission	20	Attorney Docket Number	18189K-013010US

ENCLOSURES (Check all that apply)

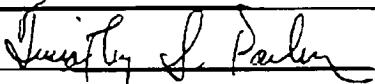
<input checked="" type="checkbox"/> Fee Transmittal Form	<input checked="" type="checkbox"/> Drawing(s)	<input type="checkbox"/> After Allowance Communication to TC			
<input type="checkbox"/> Fee Attached	<input type="checkbox"/> Licensing-related Papers	<input type="checkbox"/> Appeal Communication to Board of Appeals and Interferences			
<input type="checkbox"/> Amendment/Reply	<input checked="" type="checkbox"/> Petition	<input type="checkbox"/> Appeal Communication to TC (Appeal Notice, Brief, Reply Brief)			
<input type="checkbox"/> After Final	<input type="checkbox"/> Petition to Convert to a Provisional Application	<input type="checkbox"/> Proprietary Information			
<input type="checkbox"/> Affidavits/declaration(s)	<input type="checkbox"/> Power of Attorney, Revocation Change of Correspondence Address	<input type="checkbox"/> Status Letter			
<input type="checkbox"/> Extension of Time Request	<input type="checkbox"/> Terminal Disclaimer	<input checked="" type="checkbox"/> Other Enclosure(s) (please identify below):			
<input type="checkbox"/> Express Abandonment Request	<input type="checkbox"/> Request for Refund	Prosecution docket report, copy of Notice of Abandonment, Declaration, Power of Attorney, Statement under 37 CFR. 3.73(b), copy of Assignment, copy of Notice to File Missing Parts			
<input type="checkbox"/> Information Disclosure Statement	<input type="checkbox"/> CD, Number of CD(s) _____				
<input type="checkbox"/> Certified Copy of Priority Document(s)	<input type="checkbox"/> Landscape Table on CD				
<input type="checkbox"/> Reply to Missing Parts/ Incomplete Application					
<input checked="" type="checkbox"/> Reply to Missing Parts under 37 CFR 1.52 or 1.53					
<table border="1"> <tr> <td>Remarks</td> <td colspan="2">The Commissioner is authorized to charge any additional fees to Deposit Account 20-1430.</td> </tr> </table>			Remarks	The Commissioner is authorized to charge any additional fees to Deposit Account 20-1430.	
Remarks	The Commissioner is authorized to charge any additional fees to Deposit Account 20-1430.				

SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT

Firm Name	Townsend and Townsend and Crew LLP		
Signature			
Printed name	Karen B. Dow		
Date	December 20, 2004	Reg. No.	29,684

CERTIFICATE OF TRANSMISSION/MAILING

I hereby certify that this correspondence is being facsimile transmitted to the Patent and Trademark Office, Fax No. (703) 308-7751 on December 20, 2004.

Signature	
Typed or printed name	Timothy S. Parker
Date	December 20, 2004

I hereby certify that this correspondence is being facsimile
transmitted to the United States Patent and Trademark Office,
Attn: OIPE Customer Service
Fax No. 703-308-7751 on December 20, 2004

PATENT
Attorney Docket No.: 18189K-013010US

TOWNSEND and TOWNSEND and CREW LLP

By: Christy J. Parker

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of:

DAVID K. LEWIS

Application No.: 10/609,135

Filed: June 27, 2003

For: SYSTEMS AND METHODS FOR
SURFACE PASTEURIZATION OF
PRODUCE

Customer No.: 20350

Confirmation No.: 6736

Examiner: Not yet assigned

Technology Center/Art Unit: Not yet
assigned

PETITION UNDER 37 C.F.R. § 1.181(a)
TO WITHDRAW HOLDING OF
ABANDONMENT

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Attn: OIPE Customer Service

Sir:

Applicants respectfully petition under 37 C.F.R. § 1.181(a) and MPEP § 711.03 to withdraw the holding of abandonment for the above-referenced patent application.

As evidence, the following item is submitted herewith:

Exhibit A: A copy of the docket records of attorney for applicants for the period of November 20-26, 2003. The records indicate no activity for the above referenced patent application during this time.

Appl. No. 10/609,135
Petition dated December 20, 2004

PATENT

REMARKS

According to a Notice of Abandonment under 37 CFR 1.53(f) OR (g), mailed on October 19, 2004 and received by attorney for applicants, this application has been deemed abandoned, because no response to the Notice To File Missing Parts of Non-Provisional Application mailed September 23, 2003 has been received.

Applicants submit that the holding of abandonment is in error, because Applicants' attorney never received the Notice to File Missing Parts mailed September 23, 2003. Applicants' attorney has conducted a search of the file jacket of the present application and has discovered no indication that the aforementioned Notice to File Missing Parts was ever received. Pursuant to MPEP §711.03(c)(I)(A), a copy of the docket records (Exhibit A) for this application is submitted to indicate that the Office Action was not received. If the Notice to File Missing Parts mailed September 23, 2004 had been received, an entry would have been made in the docket records to reflect the due date of November 23, 2003 for responding to the Action, specifically between the "Due Date:" entries for "021284-003200US" and "14572P-060800US".

As such, Applicants hereby respectfully request grant of the petition and withdrawal of the holding of abandonment for the above-referenced patent application.

Applicants further state that the entire delay in filing the petition pursuant to 37 C.F.R. 1.137(b)(3), from the final due date for filing a response to the Notice to File Missing Parts mailed September 23, 2004, to the filing of a grantable petition, including the delay from the date of discovery of the abandonment of the application, was unintentional.

Applicants note that no petition fee is required. However, the Commissioner for Patents is authorized to charge any additional fees deemed necessary or credit overpayment to the deposit account 20-1430 of the undersigned.

Finally, Applicants submit as an attachment hereto an appropriate response to the aforementioned Notice to File Missing Parts, a copy of which was faxed to attorney for Applicant on December 2, 2004.

Appl. No. 10/609,135
Petition dated December 20, 2004

PATENT

If a telephone conference would expedite consideration of this matter, the Examiner is invited to telephone the attorney for applicant, Kevin T. LeMond, at (415) 576-0200.

Respectfully submitted,

Karen Babeyak-Dow
Karen B. Dow
Reg. No. 29,684

TOWNSEND and TOWNSEND and CREW LLP
Two Embarcadero Center, 8th Floor
San Francisco, California 94111-3834
Tel: 415-576-0200
Fax: 415-576-0300
Attachment: Exhibit A
KTL/tp
60370615 v1

Prosecution Docket Report

For: Kevin T. LeMond

Country: For US Matters

Start Date: 11/20/2003

Start Date: 11/28/2003

Date Type: Both Due and Reminder Dates
End Date: 11/26/2003

Date Client/Matter (Pat/TM)	Action/Events Notes	Title/Mark Client	App - Reg No Filing - Issue Date	Country Status	Bill - Resp Party Other Atty's
<u>Due Date: 11/22/2003</u> 008822-0002000US (TM)			<u>350493</u> 2/16/1982	<u>1279283</u> 5/22/1984	<u>KTL - MJB</u> BWS
<u>Due Date: 11/22/2003</u> 020952-000210US (Pat)			<u>10/647066</u> 8/22/2003	<u>US</u> Pending	<u>KTL - BNY</u> BNY
<u>Due Date: 11/23/2003</u> 021284-003200US (Pat)			<u>09/151881</u> 9/11/1998	<u>6065230</u> 5/23/2000	<u>US</u> Granted
					<u>MAS - KJC</u> KTL
<u>Due Date: 11/24/2003</u> 14572P-060800US (Pat)			<u>09/930122</u> 8/13/2001	<u>US</u> Pending - Published	<u>KTL - KTL</u> KTL
<u>Due Date: 11/24/2003</u> 14572P-060800US (Pat)			<u>09/930122</u> 8/13/2001	<u>US</u> Pending - Published	<u>KTL - KTL</u> KTL
<u>Due Date: 11/26/2003</u> 015453-002210US (Pat)			<u>09/799922</u> 3/5/2001	<u>US</u> Pending	<u>MAS - KTL</u> KTL
<u>Due Date: 11/26/2003</u> 020792-000110US (Pat)			<u>10/343862</u> 8/26/2003	<u>US</u> Pending	<u>KTL - KTL</u> KTL
<u>Due Date: 11/26/2003</u> 020824-005500US (Pat)			<u>29/1185379</u> 6/26/2003	<u>US</u> Pending	<u>KTL - PRJ</u> PRJ
<u>Due Date: 11/26/2003</u> 14572P-002840US (Pat)			<u>08/998961</u> 12/29/1997	<u>US</u> Pending	<u>KTL - KTL</u> KTL



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
 United States Patent and Trademark Office
 Address: COMMISSIONER FOR PATENTS
 P.O. Box 1450
 Alexandria, Virginia 22313-1450
 703-308-1202

APPLICATION NUMBER	FILING OR 371(C) DATE	FIRST NAMED APPLICANT	ATTY. DOCKET NO./TITLE
10/609,135	06/27/2003	David K. Lewis	18189K-013010US

CONFIRMATION NO. 6736

ABANDONMENT/TERMINATION
LETTER

OC000000014128147

20350
 TOWNSEND AND TOWNSEND AND CREW, LLP
 TWO EMBARCADERO CENTER
 EIGHTH FLOOR
 SAN FRANCISCO, CA 94111-3834

Date Mailed: 10/19/2004

NOTICE OF ABANDONMENT UNDER 37 CFR 1.53 (f) OR (g)

The above-identified application is abandoned for failure to timely or properly reply to the Notice to File Missing Parts (Notice) mailed on 09/23/2003.

- No reply was received.

A petition to the Commissioner under 37 CFR 1.137 may be filed requesting that the application be revived.

Under 37 CFR 1.137(a), a petition requesting the application be revived on the grounds of UNAVOIDABLE DELAY must be filed promptly after the applicant becomes aware of the abandonment and such petition must be accompanied by: (1) an adequate showing of the cause of unavoidable delay; (2) the required reply to the above-identified Notice; (3) the petition fee set forth in 37 CFR 1.17(l); and (4) a terminal disclaimer if required by 37 CFR 1.137(d).

Under 37 CFR 1.137(b), a petition requesting the application be revived on the grounds of UNINTENTIONAL DELAY must be filed promptly after applicant becomes aware of the abandonment and such petition must be accompanied by: (1) a statement that the entire delay was unintentional; (2) the required reply to the above-identified Notice; (3) the petition fee set forth in 37 CFR 1.17(m); and (4) a terminal disclaimer if required by 37 CFR 1.137(d).

Any questions concerning petitions to revive should be directed to the "Office of Petitions" at (703) 305-9282. Petitions should be mailed to: Mail Stop Petitions, Commissioner for Patents, P.O. Box 1450, Alexandria VA 22313-1450.

*A copy of this notice **MUST** be returned with the reply.*

R13
 Customer Service Center

Initial Patent Examination Division (703) 308-1202

PART 2 - COPY TO BE RETURNED WITH RESPONSE

Notice of Abandonment

This application is abandoned in view of applicant's failure to timely file a proper reply to the Office notice mailed on 09-23-03.

Petition to Withdraw the Holding of Abandonment

If a complete reply to the notice was previously filed by applicant within the time period set forth in the notice, applicant may request for reconsideration of the holding of abandonment within 2 months from the mailing of this notice of abandonment by filing a petition to withdraw the holding of abandonment under 37 CFR 1.181(a). No petition fee is required. The petition must be accompanied by a true copy of the originally filed reply and the item(s) identified in one of the following:

1. A properly itemized date-stamped postcard receipt (see MPEP § 503);
2. If the originally filed reply included a certificate of mailing or transmission in compliance with 37 CFR 1.8(a), a copy of the certificate of mailing or transmission and a statement in compliance with 37 CFR 1.8(b) (see MPEP § 512); or
3. If the reply was filed via Express Mail, a submission satisfying the requirements of 37 CFR 1.10(e) including, for example, a copy of the Express Mail mailing label showing the "date-in" (see MPEP § 513)

Any petition to withdraw the holding of abandonment should be transmitted by facsimile directly to OIPE Customer Service at (703) 308-7751.

Petition to Revive an Abandoned Application

If applicant did not previously file a complete reply within the time period set forth in the notice, applicant may file a petition to revive the application under 37 CFR 1.137.

Under 37 CFR 1.137(a), a petition requesting the application be revived on the grounds of UNAVOIDABLE DELAY must be filed promptly after the applicant becomes aware of the abandonment and such petition must be accompanied by:

1. an adequate showing of the cause of unavoidable delay;
2. the required reply to the above-identified notice;
3. the petition fee set forth in 37 CFR 1.17(i); and
4. a terminal disclaimer if required by 37 CFR 1.137(d).

See MPEP § 711.03(c) and Form PTO/SB/61.

Under 37 CFR 1.137(b), a petition requesting the application be revived on the grounds of UNINTENTIONAL DELAY must be filed promptly after applicant becomes aware of the abandonment and such petition must be accompanied by:

1. a statement that the entire delay was unintentional;
2. the required reply to the above-identified notice;
3. the petition fee set forth in 37 CFR 1.17(m); and
4. a terminal disclaimer if required by 37 CFR 1.137(d).

See MPEP § 711.03(c) and Form PTO/SB/64.

Any questions concerning petitions to revive should be directed to Office of Petitions at (703) 305-9282.

Any questions regarding this notice should be directed to OIPE Customer Service at (703) 308-1202.

Customer Service Center

Initial Patent Examination Division (703) 308-1202